

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RIGOBERTO VASQUEZ-MARTINEZ,

Defendant.

8:15CR206

ORDER

This matter is before the court on defendant's motion to vacate pursuant to [28 U.S.C. § 2255](#). [Filing No. 77](#). Under the Rules Governing Section 2255 Proceedings for the United States District Courts ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See [28 U.S.C. § 2255](#), Rule 4(b). The rules provide that unless "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to Counts I and II of the Indictment. Count I charged that defendant possessed with the intent to distribute 500 grams or more of a mixture or substance containing detectable amount of methamphetamine in violation of [21 U.S.C. §§ 841\(a\)\(I\)](#) and (b)(I), and Count II charged that defendant was an excluded alien who had previously been denied admission, in violation of Title 8, United States Code, Section 1326(a). Defendant was sentenced to 70 months imprisonment on Count I and 24 months on Count II, with said terms of imprisonment to run concurrently.

Filing Nos. 61, 65 and 68. In his § 2255 motion, the defendant alleges that he received ineffective assistance of counsel in connection with his guilty plea and sentencing, as well as his appeal rights.

On initial review, the court finds that “it does not plainly appear that the defendant is entitled to no relief,” and that the government should be required to answer. On receipt of the government’s answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant’s claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See Rule 8(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant’s Section 2255 motion within 21 days of the date of this Order.

Dated this 15th day of May, 2017.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge